



July 5, 2002

Mr. G. Chadwick Weaver  
First Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2002-3650

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165338.

The Midland Police Department (the "department") received a request for four specified case numbers pertaining to a named individual. You state that you have released redacted copies of three of the requested reports, submitted as Exhibit C, to the requestor. Furthermore, you state that you have provided the requestor with basic information from the remaining report, submitted as Exhibit B. *See* Gov't Code § 552.108(c) (stating basic information about a crime or arrest not excepted from public disclosure under Gov't Code § 552.108); *see also Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). You claim that driver's license information must be withheld pursuant to section 731.002 of the Transportation Code. You claim that the remainder of the information you have withheld is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that, with the exception of the basic information you have released, the information submitted in Exhibit B is excepted from public disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that incident reported in Exhibit B did not result in a conviction or deferred adjudication, and that the investigation has concluded and the case is closed. Therefore, we agree that section 552.108(a)(2) is applicable. Accordingly, we determine that the department may withhold the remainder of

Exhibit B pursuant to section 552.108(a)(2) of the Government Code. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

You claim that the department must withhold driver's license numbers from public disclosure pursuant to section 731.002 of the Transportation Code. Please note that the Seventy-seventh Legislature repealed chapter 731 of the Transportation Code, effective September 1, 2001. *See* Act of May 25, 2001, 77<sup>th</sup> Leg., R.S., ch. 1032, § 9, 2001 Tex. Gen. Laws 2281, 2286. Accordingly, we do not address the applicability of section 731.002 to the information at issue. The public availability of Texas driver's license and motor vehicle information is covered by section 552.130 of the Government Code, which provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Thus, the department must withhold Texas driver's license numbers, Texas identification card numbers, vehicle identification numbers, license plate numbers and related motor vehicle information under section 552.130 of the Government Code.

Next, you claim that social security numbers are excepted from disclosure. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* You cite section 411.086 of the Government Code. That provision contemplates rules that the Department of Public Safety ("DPS") shall adopt in regard to requests for criminal history information. Section 411.086(b)(2) states that such rules "may require a person requesting criminal history information about an individual to submit to [DPS] one or more of the following: . . . (E) any known identifying number of the individual, including social security number . . . ."

While you state that the collection of social security numbers "by police officers helps establish identities of criminals," you do not inform this office whether the department obtained or maintains any of the social security number information at issue to request criminal history information from DPS. Moreover, you do not inform us as to whether DPS actually requires or required the department to submit any of the social security number information at issue.

Thus, we determine that if the department obtained or maintains social security numbers for the purpose of requesting criminal history information from DPS, and if DPS actually requires or required the department to submit that information to DPS in connection with a request for criminal history information, then the social security numbers are confidential under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act. If the department did not obtain or maintain the social security numbers pursuant to a provision of law enacted on or after October 1, 1990, the social security numbers are not confidential under the Social Security Act and must be released.

In summary, the department may withhold the remainder of Exhibit B under section 552.108(a)(2) of the Government Code. Texas motor vehicle and personal identification card information must be withheld under section 552.130 of the Government Code. If the department obtained or maintains social security numbers to request criminal history record information from DPS, and if DPS actually requires or required the department to submit the social security numbers with its request for criminal history information, then the department must withhold the social security numbers under section 552.101 of the Government Code in conjunction with the federal Social Security Act on the basis of section 411.086 of the Government Code. Otherwise, the department must release the social security numbers to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

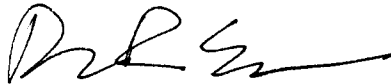
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 165338

Enc: Submitted documents

c: Ms. Heidi Redmon  
7327 Washington Avenue #10  
Whittier, California 90602  
(w/o enclosures)